

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

OHIO SECURITY INSURANCE  
COMPANY, et al.,

Plaintiffs,

v.

GARAGE PLUS STORAGE  
AVIATION LLC, et al.,

Defendants.

CASE NO. C21-5579 BHS

ORDER DENYING AS MOOT  
PLAINTIFFS' MOTION FOR  
CLARIFICATION OR PARTIAL  
RECONSIDERATION

This matter comes before the Court on Plaintiffs Ohio Security Insurance Company and Ohio Casualty Insurance Company's (collectively "Ohio") motion for clarification or partial reconsideration. Dkt. 51.

Ohio commenced this declaratory judgment action in August 2021 involving a dispute as to liability insurance coverage for an underlying state court action, *Alan Rainwater, et al. v. Marlene Perdue, et al.*, Pierce County Case No. 18-2-12960-1. Dkt. 1. On April 25, 2022, the Court ruled on Ohio's motion for summary judgment, motions to strike and dismiss Defendants' affirmative defenses, and motion for protective order, and Defendant Alan Rainwater's Rule 56(d) motion to continue. Dkt. 50. Relevant to the

1 instant motion, the Court converted Defendants’ affirmative defenses asserting bad faith  
2 and coverage by estoppel into counterclaims pursuant to Rule 8(c)(2). *Id.* at 8–9. The  
3 Court granted Ohio’s motion to dismiss but dismissed the counterclaims without  
4 prejudice and with leave to amend. *Id.* at 9. The Court also granted Ohio’s motion for  
5 summary judgment on the narrow issue of whether Ohio had a duty to defend or  
6 indemnify Defendants Garage Plus Storage Aviation LLC, Danny Simon, or Jeremy  
7 Simon in the underlying state court action. *See id.* at 12–18.

8 On April 27, 2022, Ohio moved for the Court to modify its April 25 Order  
9 pursuant to Federal Rule of Civil Procedure 60. Dkt. 51. Specifically, it requests that the  
10 Court strike the following as a clerical error:

11 While the Court has concluded that, as a matter of law, Ohio did not  
12 have a duty to defend or indemnify Defendants Garage Plus, Danny Simon,  
13 or Jeremy Simon in the Underlying Action, there are still issues and  
14 counterclaims to be resolved. Ohio’s proposed order on its motion for  
15 summary judgment seeks a declaratory judgment that it correctly denied the  
16 claims for liability coverage, that it had no obligation to accept or respond  
17 to the Estate’s settlement offers, and that it did not breach its Policies with  
18 Garage Plus. *See* Dkt. 14-1. As discussed above, Defendants have raised  
the issue of bad faith, and “an insurer that, in bad faith, refuses or fails to  
defend is estopped from denying coverage.” [*Truck Ins. Exch. v. Vanport  
Homes*, 147 Wn.2d [751,] 759 [(2002) (en banc)].

The Court will not enter judgment and close the case until the  
counterclaim of bad faith and coverage by estoppel are resolved.  
Accordingly, discovery should commence on these issues, if it has not  
already begun . . . .

19 Dkt. 50 at 19. Ohio argues that this portion of the Court’s Order was clerical error  
20 because Defendants had yet to file an amended pleading and, as such, there were no  
21 active counterclaims. Dkt. 51 at 3–4.

1 “It is well established that district courts have inherent power to control their  
2 docket.” *Ready Transp., Inc. v. AAR Mfg., Inc.*, 627 F.3d 402, 404 (9th Cir. 2010)  
3 (citations and quotations omitted). “The inherent powers are mechanisms for ‘control  
4 necessarily vested in courts to manage their own affairs so as to achieve the orderly and  
5 expeditious disposition of cases.’” *Id.* (quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32,  
6 43 (1991)). The Court was aware that there were no active counterclaims, and Defendants  
7 were ordered to amend their Answers accordingly. It was the purpose of the Court to  
8 achieve an expeditious disposition of the assertion of bad faith and proceed to the merits  
9 of the case. In any event, Ohio’s motion for clarification or partial reconsideration has  
10 been mooted by Defendant Alan Rainwater’s amended answer, which asserts an  
11 insurance bad faith counterclaim. *See* Dkt. 52, ¶¶ 73–90.

12 Ohio’s motion for clarification or partial reconsideration, Dkt. 51, is therefore  
13 **DENIED as moot.**

14 **IT IS SO ORDERED.**

15 Dated this 11th day of May, 2022.

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18 BENJAMIN H. SETTLE  
19 United States District Judge  
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